

Warren E. Waters

Richard C. Duncan

February 19, 1954

Charles F. Tessieu, Esq.
County Solicitor
Lebanon, New Hampshire

Dear Charlie:

You have inquired (1) whether Revised Laws, chapter 437, section 16, permits a defendant in extradition to wait until the time set for his appearance before the local court that may have earlier admitted him to bail, before the Governor's warrant in extradition can be served upon him; and (2) whether the defendant has the right under our criminal extradition law to release on bail after being arrested on a Governor's warrant?

You are respectfully advised that it is my opinion that the answer to both of these questions is in the negative.

Revised Laws, chapter 437, section 15, provides that if after a preliminary examination before judge or magistrate it appears that the defendant is the person charged with having committed the crime alleged in the foreign jurisdiction and that he has fled from justice, he may be committed, to await his arrest under warrant of the Governor of this state on requisition of the executive authority of the state having jurisdiction of the offense, unless he gives bail. Section 16 provides that if he is released on bail, his bail shall be conditioned for his appearance at a time specified, then to be re-arrested upon warrant of the Governor of New Hampshire. However, section 17 specifically provides that if he has not been arrested under warrant of the Governor "by the expiration of the time specified in the warrant or bond, . . . a judge or magistrate may discharge him or recommit him . . ."

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Read together, these sections indicate that at such time as the warrant of the Governor of New Hampshire issues, the defendant may be arrested thereon forthwith, whether or not such arrest occurs at a time prior to the date set by the judge or magistrate for his appearance on bail.

No authority is found in the statute providing for bail after arrest on the Governor's warrant. However, at such time as a defendant has been arrested upon the warrant of the Governor of New Hampshire in extradition, he shall forthwith be taken before a judge of a court of record in this state where he shall be advised of his right to legal counsel and to apply for a writ of habeas corpus. In the event of such an application it is believed that the question of bail lies in the discretion of that court of record before which the defendant has been taken. (R.L., c. 437, s. 10).

With best regards.

Sincerely,

Louis C. Wyman
Attorney General

W/d

cc: State Police